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The *InterConnect* FLASH!

Practical Bursts of Information Regarding Critical Independent Contractor Relationships

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A CHOICE IS NOT A CHOICE

In the words of Yogi Berra, it is deja vu all over again for trucking companies concerning worker classification status in California. This month, the Ninth Circuit U.S. Court of Appeals struck down a lower Court's ruling in *Ruiz v. Affinity Logistics Corp.* in a move eerily reminiscent to a decision they made back in 2010 and one which should have motor carriers on alert.

This latest ruling centered around an independent contractor agreement entered into between the trucking company and its drivers. The drivers were referred to as independent contractors in the agreement, which provided that any dispute would be governed by Georgia law, the state where the trucking company was headquartered. The lower Court applied California's standard framework for analyzing choice-of-law provisions, looking at whether the chosen state (in this case, Georgia) had a substantial relationship to the parties or their transaction. The Court determined that Georgia did indeed have such a relationship because the trucking company is incorporated in Georgia. As such, the lower Court applied Georgia law, which presumes independent contractor status unless the drivers can rebut the presumption and show that they are employees. The drivers appealed the decision to the Ninth Circuit.

Initially, the Appeals Court agreed with the lower Court's analysis of the choice-of-law principles, finding that Georgia had a substantial relationship to the parties. But, the Appeals Court said the inquiry should not end there. There were two additional issues which needed to be examined: (1) whether applying Georgia law is contrary to a fundamental California policy, and (2) whether California had a materially greater interest than Georgia in the resolution of the issue before the Court.

The Court found that the starting point from which the drivers began their lawsuit is polar opposite depending on which state's law applies. Georgia law presumes independent contractor status unless rebutted by the drivers; under California law, once the driver shows he has provided services, he has established a prima facie case that it is an employer-employee relationship unless the employer proves otherwise. This makes Georgia law contrary to a fundamental California policy which seeks to protect workers.

The Court also found that the company did not identify a material interest or explain how Georgia law would suffer if California law was used instead. Since the drivers lived, worked, and signed contracts in California, the Court concluded that California had a materially greater interest in determining the question of employee status.

This outcome is like a flashback to a similar ruling by this same Court in 2010. Back in September 2010 we brought you a look at the case of *Narayan v. EGL, Inc.*, where the Court found that despite signed independent contractor agreements and the parties' designation of Texas law as the agreements' governing law, the Appeals Court applied California law because the Court reasoned that the drivers' claims for benefits really arose under regulations and NOT under the contract itself.

The implications from these two Ninth Circuit decisions are extremely troublesome and serve as notice of a call-to-action by motor carriers with respect to their IC agreements. Other Courts are certain to pick up on these decisions and apply their law in an effort to find employee status for any number of purposes. There are several alternative approaches that will avoid such a problem from arising but they all require some thought in relation to a motor carrier's operations.

We at Benesch can certainly help find a solution that fits your needs.

Additional Information

For additional information, please contact any of the following attorneys:

Transportation & Logistics Practice Group

Marc S. Blubaugh at 614.223.9382 or mblubaugh@beneschlaw.com

J. Allen Jones III at 614.223.9323 ajones@beneschlaw.com

Thomas Kern at 614.223.9369 or tkern@beneschlaw.com

Martha Payne at 541.764.2859 or mpayne@beneschlaw.com

Richard A. Plewacki at .216.363.4159 or rplewacki@beneschlaw.com

Teresa E. Purtiman at 614.223.9380 or tpurtiman@beneschlaw.com

Eric L. Zalud at 216.363.4178 or ezalud@beneschlaw.com

Labor & Employment Practice Group

Maynard Buck at 216.363.4694 or mbuck@beneschlaw.com

Joseph N. Gross at 216.363.4163 or jgross@beneschlaw.com

Peter N. Kirsanow at 216.363.4481 or pkirsanow@beneschlaw.com

www.beneschlaw.com